

REMARKS

Claims 51-76 are pending in this application. Claims 51, 73, and 75 have been amended for clarification. This amendment involves no new matter.

In the subject Office Action, the Examiner rejected claims 51-73 under 35 U.S.C. § 101; further rejected claims 51 and 73 under 35 U.S.C. § 102(e) based on Crampton (US 7,184,047); rejected claims 51-53, 55, 57-59, 67 and 72-76 under 35 U.S.C. § 103(a) based on Posa (US 2003/0108851) in view of Crampton; and rejected claims 68-71 under 35 U.S.C. § 103(a) based on Posa in view of Crampton and in further view of Abrams et al. (US 5,673,691). Applicant gratefully acknowledges the Examiner's indication of allowability of claims 54, 56, and 60-66 if not dependent on a rejected base claim. Applicant respectfully requests reconsideration of the rejections in light of the foregoing amendments and the following remarks.

A. Rejection under 35 U.S.C. § 101 Should Be Withdrawn

The rejection of claims 51-73 under 35 U.S.C. § 101 should be withdrawn. Independent claim 51, as amended, recites “displaying said second image,” as suggested by the Examiner. Although Applicant respectfully disagrees that such a displaying step is required to meet the “machine-or-transformation” test of *In re Bilski*, claim 51 in its current form clearly meets the transformation test, as do claims 52-72 which directly or indirectly depend from claim 51. Similarly, claim 73, as amended, recites “generating a computer model” and thus is tied to a particular machine (*i.e.*, a computer), and therefore claim 73 meets the “machine-or-transformation” test of *In re Bilski*. In view of the foregoing, Applicant respectfully requests that the Examiner withdraw the rejection of claims 51-73 under 35 U.S.C. § 101.

B. Rejection under 35 U.S.C. § 102(e) based on Crampton Should Be Withdrawn

The rejection of claims 51 and 73 under 35 U.S.C. § 102(e) based on Crampton should be withdrawn.

With regard to claim 51, among other reasons, Crampton does not disclose a “body shape designation being representative of where fat is located on said person” as recited in claim 51. The Examiner pointed to the mention of body mass index (BMI) in Crampton as being indicative of fat. However, as evidenced by the attached Exhibit A, BMI is not indicative of fat, much less an indication of where fat is located on a person. Rather, BMI is simply a calculation based

solely on height and weight. As evidenced by the sample images of Exhibit B, two different persons may have the same BMI (in this example, 32.3) because they have the same height (in this example, 5'6") and weight (in this example, 200 lb.), yet they may have a radically different body fat percentage (in this example, 43 vs. 12). In view of the foregoing, claim 51 is allowable over Crampton.

With regard to claim 73, among other reasons, Crampton does not disclose "generating a computer model of said person comprising a fat layer and a muscle layer" nor "adjusting said first image by increasing or decreasing at least one of said fat layer and said muscle layer independently of the other" as recited in claim 73. Therefore, claim 73 is allowable over Crampton.

C. Rejection under 35 U.S.C. § 103 based on Posa in view of Crampton Should Be Withdrawn

The rejection of claims 51-53, 55, 57-59, 67 and 72-76 under 35 U.S.C. § 103(a) based on Posa in view of Crampton should be withdrawn.

With respect to claim 51, as discussed above, Crampton does not disclose or suggest a "body shape designation being representative of where fat is located on said person," and neither does Posa, either alone or in combination. Therefore, claim 51 and its dependent claims are allowable over Posa and Crampton.

With respect to claim 73, as discussed above, Crampton does not disclose or suggest "generating a computer model of said person comprising a fat layer and a muscle layer" nor "adjusting said first image by increasing or decreasing at least one of said fat layer and said muscle layer independently of the other," and neither does Posa, either alone or in combination. Neither Posa nor Crampton discloses or suggests modeling a fat layer or a muscle layer, much less adjusting at least one of those layers independently of the other. Rather, Posa and Crampton merely disclose images defined by an outer boundary of a person. Contrary to the Examiner's argument, the fact that legs and hands (or other body parts, for that matter) of an actual person may have fat or muscles in them does not mean that Posa or Crampton disclose modeling such layers. Any disclosure of Posa or Crampton related to modification of the appearance of a body part is simply based on expanding or shrinking an outer boundary, not modeling fat or muscle layers. Therefore, claim 73 and its dependent claim are allowable over Posa and Crampton.

With respect to claim 75, as discussed above in connection with claim 51, neither Crampton nor Posa, either alone or in combination, discloses or suggests a “body shape designation being representative of where fat is located on said person” as recited in claim 75. Therefore, claim 75 is allowable over Posa and Crampton.

With respect to claim 76, neither Crampton nor Posa, either alone or in combination, discloses or suggests “a computerized model comprising a fat layer and a muscle layer” nor “adjusting said first image by increasing or decreasing at least one of a representation of said fat layer and a representation of said muscle layer independently of the other” as recited in claim 76. Therefore, claim 76 is allowable over Posa and Crampton.

D. Rejection under 35 U.S.C. § 103 based on Posa in view of Crampton and Abrams et al. Should Be Withdrawn

The rejection of claims 68-71 under 35 U.S.C. § 103(a) based on Posa in view of Crampton and in further view of Abrams et al. should be withdrawn. Claims 68-71 depend directly or indirectly from claim 51, which is allowable as discussed above. Therefore, claims 68-71 are likewise allowable.

E. Interview Summary

Applicant’s undersigned attorney conducted a telephone interview with Examiner Patel on July 13, 2009. Crampton was discussed, as well as proposed amendments to claims 51, 73, and 75 as shown herein. No agreement was reached as the Examiner indicated he would need to conduct further review.

F. Conclusion

In view of the foregoing, Applicant respectfully submits that claims 51-76 are in condition for allowance, and such is earnestly requested. If the Examiner believes a telephone conference will advance the prosecution of this application, the Examiner is respectfully requested to contact the undersigned attorney.

The fees for this submission are being paid by credit card. However, the Commissioner is authorized to charge any deficiency in fees or credit any overpayment to Deposit Account No. 03-3483.

Respectfully submitted,

/court b. allen/

Courtenay B. Allen

Reg. No. 43,469

COX SMITH MATTHEWS INCORPORATED

112 East Pecan Street, Suite 1800

San Antonio, Texas 78205-1536

(210) 554-5389

(210) 226-8395 (FAX)

ATTORNEYS FOR APPLICANT

Date: August 12, 2009

Electronic submission USPTO EFS Web August 12, 2009
